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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

LHF Productions, Inc., a Nevada corporation,

Plaintiff,

v.

Frank and Jane Doe Grubb; David and Jane Doe Benavidez; Coralyn and Jane Doe Schultz; Shawn and Jane Doe Burnish; and Dale and Jane Doe Fuller, all Arizona residents.

Defendants.

No. CV-16-02644-PHX-DLR

ORDER AND DEFAULT JUDGMENT

Plaintiff LHF Productions has moved for default judgment against Defendants Frank and Marie Grubb pursuant to Federal Rule of Civil Procedure 55(b). (Doc. 42.) No response has been filed and the time for filing one has passed. For reasons stated below, default judgment is appropriate.

I. Background

LHF owns the copyright to the 2016 action thriller “London Has Fallen.” LHF alleges that Defendants unlawfully copied and distributed the movie using a network called a “BitTorrent protocol,” where users can turn media into digital files and transfer them to their computers and share them with others online. LHF brought a copyright infringement suit against the then-unknown defendants in August 2016. (Doc. 1.) The

1 amended complaint filed three months later identifies Defendants by name and asserts
2 claims for direct and contributory copyright infringement. (Doc. 14 ¶¶ 49-63.) LHF
3 seeks injunctive relief, actual or statutory damages, and an award of attorneys' fees and
4 costs. (*Id.* at 13-14.)

5 LHF served process on Frank Grubb and his wife Marie on November 14, 2016.
6 (Doc. 20.) Following the transfer of the case on January 9, 2017, the Court directed LHF
7 to file a status report given that the Grubbs were served with process but no answer or
8 application for default had been filed. (Docs. 28, 32.) LHF subsequently filed an
9 application, and the Clerk entered the Grubbs' default on January 20. (Docs. 35, 36.)

10 One month later, the Court gave LHF fourteen days to file a motion for default
11 judgment or show good cause for an extension of time to do so. (Doc. 38.) LHF filed the
12 present motion on March 9. (Doc. 42.)

13 **II. Default Judgment**

14 After default is entered by the clerk, the district court may enter default judgment
15 pursuant to Rule 55(b). The court's "decision whether to enter a default judgment is a
16 discretionary one." *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Although the
17 court should consider and weigh relevant factors as part of the decision-making process,
18 it "is not required to make detailed findings of fact." *Fair Housing of Marin v. Combs*,
19 285 F.3d 899, 906 (9th Cir. 2002).

20 The following factors may be considered in deciding whether default judgment is
21 appropriate: (1) the possibility of prejudice to the plaintiff, (2) the merits of the claims,
22 (3) the sufficiency of the complaint, (4) the amount of money at stake, (5) the possibility
23 of factual disputes, (6) whether default is due to excusable neglect, and (7) the policy
24 favoring decisions on the merits. *See Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir.
25 1986). In considering the merits and sufficiency of the complaint, the court accepts as
26 true the complaint's well-pled factual allegations, but the plaintiff must establish all
27 damages sought in the complaint. *See Geddes v. United Fin. Group*, 559 F.2d 557, 560
28 (9th Cir. 1977).

1 **A. Possible Prejudice to Plaintiff**

2 The first *Eitel* factor weighs in favor of default judgment. The Grubb Defendants
3 failed to respond to the complaint or otherwise appear in this action despite being served
4 with the complaint, the application for default, and the motion for default judgment. If
5 default judgment is not granted, LHF “will likely be without other recourse for
6 recovery.” *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).
7 The prejudice to LHF in this regard supports the entry of default judgment.

8 **B. Merits of the Claims and Sufficiency of the Complaint**

9 The second and third *Eitel* factors favor default judgment where, as in this case,
10 the complaint sufficiently states a plausible claim for relief under the pleading standards
11 of Rule 8. *See id.* at 1175; *Danning v. Lavine*, 572 F.2d 1386, 1388-89 (9th Cir. 1978).
12 A review of the complaint’s well-pled allegations shows that LHF has stated a plausible
13 claim for relief against the Grubb Defendants.

14 Under the Copyright Act, 17 U.S.C. § 106, the owner of a copyright has exclusive
15 rights to reproduce, display, and distribute the copyrighted work. Infringement occurs
16 when a person violates any of the exclusive rights of the copyright owner as provided
17 by [§] 106.” 17 U.S.C. § 501(a). To state valid copyright infringement claims, plaintiffs
18 must allege two elements: “(1) they must show ownership of the allegedly infringed
19 material and (2) they must demonstrate that the alleged infringers violate at least one
20 exclusive right granted to copyright holders under 17 U.S.C. § 106.” *LGS Architects, Inc.*
21 *v. Concordia Homes of Nev.*, 434 F.3d 1150, 1156 (9th Cir. 2006).

22 LHF alleges in the amended complaint that it owns the copyright for the movie
23 *London Has Fallen* and attaches a valid certificate of copyright registration. (Docs. 14 ¶¶
24 26-28, 14-1 at 4-5.) “Registration is prima facie evidence of the validity of a copyright.”
25 *Three Boys Music Corp. v. Bolton*, 212 F.3d 477, 488-89 (9th Cir. 2000) (citing 17
26 U.S.C. § 410(c)). LHF further alleges that the Grubb Defendants downloaded an
27 unauthorized copy of the movie on the internet using the “peer-to-peer” file transfer
28 protocol called BitTorrent. (Doc. 14 ¶¶ 7, 16, 21.) LHF claims that Defendants’ conduct

1 constitutes direct and contributory infringement and LHF has suffered damages as a
2 result. (*Id.* ¶¶ 49-57.)

3 Because the well-pled factual allegations of the complaint are deemed true upon
4 default, *see Geddes*, 559 F.2d at 560, LHF has shown that Defendants infringed upon
5 LHF's copyrighted work. The second and third *Eitel* factors weigh in favor of default
6 judgment.

7 **C. Amount of Money at Stake**

8 Under the fourth *Eitel* factor, the Court considers the amount of money at stake
9 in relation to the seriousness of the defendants' conduct. *See PepsiCo*, 238 F. Supp. 2d at
10 1176. Here, LHF seeks statutory damages in the amount of \$15,000.00. (Doc. 42 at 8.)
11 This amount is reasonable given Defendants' misconduct and the harm caused to LHF
12 and the film industry by movie piracy. *See LHF Productions, Inc. v. Watkins*, No. 2:16-
13 cv-01196-SRB (D. Ariz. Dec. 13, 2016) (granting default judgment to LHF in the amount
14 of \$15,000 for copyright infringement of its movie). Indeed, in enacting the Digital Theft
15 Deterrence Act of 1999, 17 U.S.C. § 504(c)(2), Congress increased the amount of
16 potential statutory damages for willful infringement to \$150,000.00. LHF seeks only ten
17 percent of this amount.¹

18 LHF seeks only \$430.00 in attorneys' fees given that it recently filed a similar
19 motion for default judgment in the *Watkins* case. (Doc. 42 at 12.) The Court finds the
20 requested attorneys' fee award and costs in the amount of \$460.40 to be reasonable and
21 appropriate. *See* 17 U.S.C. § 505 (the court may award costs and fees to the prevailing
22 party in a copyright infringement case). The fourth *Eitel* factor weighs in favor of a
23 default judgment.

24 **D. Possible Dispute Concerning Material Facts**

25 Given the sufficiency of the complaint and Defendants' default, "no genuine

26
27 ¹ It is worth noting that the ability of a defendant to pay the damages award is not
28 relevant because an award of damages is meant to compensate the plaintiff and deter
future misconduct. *See Geddes*, 559 F.2d at 560.

1 dispute of material facts would preclude granting [LHF's] motion.” *PepsiCo*, 238 F.
2 Supp. 2d at 1177.

3 **E. Whether Default Was Due to Excusable Neglect**

4 The Grubb Defendants were properly served with process in this matter. (Doc.
5 20.) They also were served with copies of the application for default and the present
6 motion for default judgment. (Docs. 35 at 3, 42 at 15.) It therefore “is unlikely that
7 Defendant[s'] failure to answer and the resulting default was a result of excusable
8 neglect.” *Gemmel v. Systemhouse, Inc.*, No. CIV 04-187-TUC-CKJ, 2008 WL 65604, at
9 *5 (D. Ariz. Jan. 3, 2008). This *Eitel* factor, like the other five discussed above, weighs
10 in favor of default judgment.

11 **F. Policy Favoring a Decision on the Merits**

12 The last factor always weighs against default judgment given that cases “should be
13 decided on their merits whenever reasonably possible.” *Eitel*, 782 F.2d at 1472. The
14 mere existence of Rule 55(b), however, “indicates that this preference, standing alone, is
15 not dispositive.” *PepsiCo*, 238 F. Supp. 2d at 1177 (citation omitted).

16 Moreover, Defendants' failure to answer the complaint “makes a decision on the
17 merits impractical, if not impossible.” *Gemmel*, 2008 WL 65604, at *5. Stated
18 differently, it is difficult to reach the merits when the opposing party is absent. Because
19 LHF has asserted plausible claims for relief to which Defendants have failed to respond,
20 the policy encouraging decisions on the merits does not weigh against the granting of
21 default judgment in this case.

22 **III. Conclusion**

23 Having reviewed the record and considered the *Eitel* factors as a whole, the Court
24 concludes that the entry of default judgment against the Grubb Defendants is appropriate
25 under Rule 55(b).²

26
27 ² The claims against the Benavidez, Barnish, and Fuller Defendants have been
28 dismissed. (Docs. 26, 34, 37.) LHF has settled with the Schultz Defendants and the
claims against them will be dismissed no later than April 10, 2017. (Docs. 40, 41.) After
entry of this order, and after dismissal of the remaining Schultz Defendants, the Clerk is
directed to terminate this action without further order from the Court.

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